

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

_____)	
UNITED STATES OF AMERICA)	
and STATE OF NEW JERSEY)	
)	
Plaintiffs)	
)	
v.)	
)	Civil No. 3:21-cv-00808
ATLANTIC COUNTY UTILITIES AUTHORITY,)	
Defendant.)	
_____)	

CONSENT DECREE

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WHEREAS, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of New Jersey, on behalf of the New Jersey Department of Environmental Protection (“DEP”), have filed a complaint in this action concurrently with this Consent Decree, for injunctive relief and civil penalties under Section 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2), alleging that the Defendant, Atlantic County Utilities Authority (hereinafter “the Defendant” or “ACUA”), violated regulations set forth in 40 C.F.R. Part 62, Subpart LLL (“Subpart LLL”), which were promulgated by EPA under Title I of the CAA, 42 U.S.C. §§ 7411 and 7429, and Section 129(f)(3) of the CAA, 42 U.S.C. § 7429(f)(3); and N.J.A.C. 7:27-22.1 *et seq*, which was promulgated by DEP under to New Jersey’s Air Pollution Control Act, N.J.S.A. 26:2C-1 *et seq*.

WHEREAS, the Defendant’s wastewater treatment facility, located at 1801 Absecon Blvd., Atlantic City, NJ 08401 (“Facility”), is designed to treat domestic sewage sludge with two multiple hearth sewage sludge incineration (“SSI”) units;

WHEREAS, the Complaint alleges that the Defendant operated the SSI units without timely compliance with the requirements of the above-listed statutes and regulations;

WHEREAS, EPA issued a notice of violation (“NOV”) to the Defendant with respect to such allegations on July 15, 2016;

WHEREAS, EPA provided the Defendant and the State of New Jersey with actual notice of the alleged violations, in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b);

WHEREAS, the Defendant does not admit any liability to the United States or the State of New Jersey arising out of the transactions or occurrences alleged in the Complaint;

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WHEREAS, the objectives of the Parties in entering into this Consent Decree are to protect public health, public welfare, and the environment by having the Defendant perform the actions described below, and to ensure that the Defendant achieves and maintains compliance with the CAA, applicable state and local laws, and the terms and conditions of applicable permits;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, under 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), has supplemental jurisdiction over the claims by New Jersey under 28 U.S.C. § 1367, and jurisdiction over the Parties. Venue lies in this District under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 28 U.S.C. §§ 1391(b)-(c), and 28 U.S.C. § 1395(a), because the alleged violations took place in this District. For purposes of this Decree, or any action to enforce this Decree, ACUA consents to the Court's jurisdiction over this Decree and any such action, and over ACUA, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, ACUA agrees that the Complaint states claims upon which relief may be granted under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

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3. Notice of commencement of this action has been given to ACUA and the State of New Jersey, specifically DEP, by the United States.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding on the United States and New Jersey, and on ACUA and any of its successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement to EPA Region 2, the United States Department of Justice, and the State of New Jersey in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. ACUA shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. ACUA shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, ACUA shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, or in regulations promulgated under the CAA, shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Business Day” shall mean a Day other than a Saturday, Sunday, or federal holiday.
- b. “Complaint” shall mean the complaint filed by the United States and New Jersey in this action.
- c. “Composite Sample” shall be the composite sample of sewage sludge required under Paragraph 13.a.
- d. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIII (Appendices)).
- e. “Corrective Action Plan” shall be the corrective action plan required under Paragraph 24.b.
- f. “Date of Lodging” shall mean the date on which the Consent Decree is lodged with the District Court.
- g. “Day” shall mean a calendar day unless expressly stated to be a Business Day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Business Day.
- h. “Defendant” shall mean defendant Atlantic County Utilities Authority.

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i. “DEP” shall mean the New Jersey Department of Environmental Protection and any of its successor departments or agencies.

j. “DEP NJPDES Permit” shall mean the New Jersey Pollutant Discharge Elimination System Permit issued by DEP pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:1-A-1 *et seq.*, to ACUA.

k. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

l. “Effective Date” shall have the definition provided in Section XV (Effective Date).

m. “Facility” shall mean the wastewater treatment plant located at 1801 Absecon Blvd., Atlantic City, NJ 08401.

n. “Furnace A” shall mean ACUA’s secondary SSI unit, which was originally installed in 1980, and is a 16’-9” outside diameter by seven hearth Envirotech BSP unit. The equipment inventory in ACUA’s Title V Operating Permit identifies Furnace A as Incinerator A, E901.

o. “Furnace B” shall mean ACUA’s primary SSI unit, which was originally installed in 1987, and is a 25’-9” outside diameter by eight hearth Combustion Systems Inc. unit. The equipment inventory in ACUA’s Title V Operating Permit identifies Furnace B as Incinerator B, E1301.

p. “New Jersey” shall mean the State of New Jersey, on behalf of DEP.

q. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

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- r. “Parties” shall mean the United States, the State of New Jersey, and Defendant.
- s. “Section” shall mean a portion of this Decree identified by a Roman numeral.
- t. “Subpart LLL” shall mean the federal Clean Air Act regulations located at 40 C.F.R. Part 62, Subpart LLL.
- u. “Title V Operating Permit” shall mean the currently effective DEP-approved operating permit issued to ACUA by the DEP under Title V of the CAA.
- v. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

- 9. Within thirty (30) Days after the Effective Date, Defendant shall pay a civil penalty of \$75,000, together with interest accruing from the Date of Lodging of the Consent Decree, at the rate specified in 28 U.S.C. § 1961, which shall be divided between the Plaintiffs as follows:
 - a. \$37,500, plus applicable interest, to the United States; and
 - b. \$37,500, plus applicable interest, to the State of New Jersey.
- 10. ACUA shall pay the civil penalty in the following manner:
 - a. ACUA shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to ACUA by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Jersey after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt

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Collection System (“CDCS”) number, which ACUA shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Richard Dovey, President
Atlantic County Utilities Authority
(609) 272-6950
rdovey@acua.com

on behalf of ACUA. ACUA may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

At the time of payment, ACUA shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance 20 Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIV (Notices); and (iii) to EPA Region 2 in accordance with Section XIV (Notices). Such notice shall state that the payment is for the civil penalty owed under the Consent Decree in the matter of *U.S. v. Atlantic County Utilities Authority* and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-11392/1.

b. ACUA shall pay the civil penalty due to the State of New Jersey by cashier's or certified check payable to “Treasurer, State of New Jersey” and shall submit the payment with the appropriate invoice (to be provided by DEP) to the following address:

Division of Revenue
New Jersey Department of Treasury
P.O. Box 417
Trenton, New Jersey 08625-0417

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11. ACUA shall not deduct any penalties paid under this Decree under this Section or Section VIII (Stipulated Penalties), and shall not deduct any amounts paid under this Decree under Section V.E (State Community Project), in calculating its federal or state income tax.

V. COMPLIANCE REQUIREMENTS

A. Submission of Required Petitions, Final Control Plan, and Site-Specific Monitoring Plan

12. ACUA shall comply with the emission limits for sewage sludge incinerators set forth in Table 3 of Subpart LLL.

13. Mercury Monitoring Plan.

a. Within 30 Days of the Effective Date of the Consent Decree, ACUA shall implement and commence the following sewage sludge sampling and analysis program.

i. ACUA shall collect a daily sewage sludge sample from the sludge feed prior to entry into the incinerator using the methodology required under N.J.A.C. 7:14C-1.6 and under the Residual Sampling Plan of the Facility's DEP NPDES Permit.

ii. On a calendar-month basis, or every 30 Days, ACUA shall create a "composite sample" of sewage sludge from the daily samples collected under Paragraph 13(a)(i) and analyze the composite sample using the method required under N.J.A.C. 7:14C-1.6 and under the Residual Sampling Plan of the Facility's DEP NPDES permit..

b. ACUA shall submit in the quarterly report required under Paragraph 39 the results of the composite sample analyses conducted during that quarter.

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c. ACUA shall in accordance with Paragraph 14(a) submit a petition to monitor the composite sample as an alternative operating parameter and propose a limit for the mercury concentration of the composite sample to ensure Furnace A's and Furnace B's compliance with the Subpart LLL mercury emission limit.

d. From the Day that ACUA submits the petition required in Paragraph 14(a), ACUA must comply with the proposed mercury concentration limit for the composite sample until EPA approves the petition. Once EPA approves the petition, ACUA must comply with the approved mercury concentration limit for the composite sample.

e. If following ACUA's submission of a petition to use the composite sample as an alternative operating parameter limit, as required by Paragraph 14(a), the mercury content of the composite sample exceeds the composite sample's proposed and/or approved operating parameter limit, ACUA shall:

- i. Conduct a root cause analysis of the deviation(s);
- ii. Submit the root cause analysis and step(s) ACUA has taken to address the cause of the deviation in the quarterly sludge analysis report required by Requirement U5, OS0, of ACUA's Title V Operating Permit; and,
- iii. Report the deviation and submission of the root cause analysis in the quarterly report required under Paragraph 39.

14. Petitions for Site-Specific Operating Parameters and Limits and Alternate Monitoring Requirements.

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a. Within 15 Days of the Date of Lodging, ACUA shall submit to EPA for review and approval a petition for site-specific operating parameters and limits, as provided in 40 C.F.R. § 62.15965, for the control and monitoring of mercury and dioxins and furans.

The petition must include:

- i. Identification of the specific parameters proposed for monitoring;
- ii. A discussion of the relationship between these parameters and emissions of mercury and dioxins and furans, identifying how emissions of the regulated pollutants change with the changes in these parameters, and how limits on these parameters will serve to limit emissions of mercury and dioxins and furans.
- iii. A discussion of how the upper and/or lower values for these parameters will establish operating limits on these parameters, including a discussion of the averaging periods associated with those parameters for determining compliance.
- iv. A discussion identifying the methods to be used to measure and the instruments to be used to monitor the proposed parameters, as well as the relative accuracy and precision of the methods and instruments.
- v. A discussion identifying the frequency and methods for recalibrating the instruments ACUA will use to monitor the proposed parameters.

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vi. A proposed limit on the mercury content for the monthly composite sample that is based on the Subpart LLL performance tests conducted on Furnace A and Furnace B in 2019. The proposed limit may not exceed 5 parts per million by weight, which is the composite sludge mercury content limit in U5 OS Summary of the Facility Specific Requirements for the U5 Multiple Hearth Incinerators A and B set forth in the Title V Operating Permit.

b. Within 15 Days following EPA's approval of the petition for site-specific operating parameters and limits, ACUA shall submit a request for alternate monitoring requirements to EPA for approval. The request shall propose monitoring for the operating parameters in the EPA-approved petition for site-specific operating parameters and limits, must incorporate the mercury monitoring program required by Paragraph 13, and must include the following required by 40 C.F.R. § 62.15995(e)(3):

- i. Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach.
- ii. A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach and technique, the averaging period for the limit, and how the limit is to be calculated.

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- iii. Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard.

15. Final Control Plan and Site-Specific Monitoring Plan.

a. Within 30 Days of EPA's approval of the request for alternate monitoring requirements submitted under Paragraph 14.b, ACUA shall submit to DEP a final control plan, as defined in 40 C.F.R. § 62.15900, and a site-specific monitoring plan, as provided in 40 C.F.R. § 62.15995. DEP shall, in consultation with EPA, review and approve or disapprove the final control plan and site-specific monitoring plan.

b. The final control plan must include the standard operating procedures, and equipment inspection and maintenance procedures and schedules developed under Appendix A ("Standard Operating Procedures for Bypass Events") and the following information required by 40 C.F.R. § 62.15900:

- i. A description of the devices for air pollution control and process changes that ACUA will use to comply with the emission limits and standards for all pollutants covered by Subpart LLL and the other requirements of that subpart;
- ii. The type(s) of waste to be burned;
- iii. The maximum design sewage sludge burning capacity; and,
- iv. The petitions approved under Paragraph 14.

c. The site-specific monitoring plan must include any alternate monitoring requirements approved by EPA

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d. ACUA shall review, revise, and resubmit the final control plan and site-specific monitoring plan to address EPA comments and DEP comments or to reflect any changes in Facility operations within thirty (30) Days of receiving comments or making changes in Facility operations.

B. Compliance Demonstration

16. Performance Tests. ACUA shall conduct the performance test of Furnace A and Furnace B to demonstrate compliance with all Subpart LLL emission limits and standards, and confirm and/or re-establish operating parameter limits, in accordance with 40 C.F.R. §§ 60.8, 62.15980(a), 62.15985, 62.16000, 62.16005, and 62.16015 and by no later than the following dates:

- a. For Furnace A, ACUA shall conduct a performance test no later than October 1, 2020.
- b. For Furnace B, ACUA shall conduct a performance test no later than November 1, 2020.

17. Performance Test Reports. Within 60 Days of completing a performance test for each SSI unit, ACUA shall submit to EPA and DEP the following:

- a. The complete test report for the performance test results;
- b. The results of the evaluation of the performance of the continuous monitoring systems; and,
- c. The values for the site-specific operating limits confirmed and/or re-established during the performance test, including calculations and methods;

18. Application for Permit Modification. Concurrent with the submission of the performance test reports required under Paragraph 17, and within 60 Days of completing the

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performance test for each SSI unit, ACUA shall submit to DEP an application to modify the Title V Operating Permit.

a. If the performance test conducted under Paragraph 16 satisfies all performance test requirements set forth in 40 C.F.R. § 62.16015, including the requirement that the sewage sludge incinerator be operated at a minimum of 85-percent of permitted capacity during each test run, ACUA shall apply to modify the Facility's Title V Operating Permit to incorporate the operating parameter limits confirmed and/or re-established during that performance test.

b. If the performance test conducted under Paragraph 16 does not satisfy the 40 C.F.R. § 62.16015 requirement that the sewage sludge incinerator be operated at a minimum of 85-percent of the permitted capacity during each test run, ACUA shall apply to modify the Facility's Title V Operating Permit to either:

- i. Incorporate the operating parameter limits confirmed and/or re-established during the performance test and modify the permitted maximum sludge feed rate to 117.6% of the lowest sludge feed rate recorded during any test run of the performance test; or,
- ii. Incorporate the operating parameter limits, including the minimum afterburner temperature, established during the Subpart LLL performance tests conducted in 2019.

When submitting the permit modification application for Furnace A, ACUA shall concurrently submit to DEP the Final Control Plan and Site Specific Monitoring Plan

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approved under Paragraph 15, and the SOPs for bypass events required and approved under Paragraph 34.

19. Failure to Meet the 40 C.F.R. § 62.16015 Requirement to Test at 85% of Permitted Capacity. If the performance test conducted under Paragraph 16 does not satisfy the 40 C.F.R. § 62.16015 performance test requirement that the sewage sludge incinerator be operated at a minimum of 85-percent of the permitted capacity during each test run, then the following conditions apply:

a. If ACUA chooses to submit an application to modify the Facility's Title V Operating Permit as provided in Paragraph 18.b.i., ACUA shall not be subject to stipulated penalties under Section VIII (Stipulated Penalties) for failing to conduct a performance test meeting the requirements of 40 C.F.R. § 62.16015 as required by Paragraph 16.

b. If ACUA chooses to submit an application to modify the Facility's Title V Operating Permit as provided in Paragraph 18.b.ii, then:

i. ACUA shall conduct another performance test for the relevant furnace in accordance with 40 C.F.R. § 62.16015 within 180 Days of submitting the performance test report required in Paragraph 17.

ii. Following the performance test, ACUA shall submit an application to modify the Facility's Title V Operating Permit in accordance with Paragraph 18.a or b.

20. Non-compliance with Emission Limits. If the performance test required by Paragraph 16 satisfies the requirements of 40 C.F.R. § 62.16015, but fails to demonstrate compliance with emission limits for any pollutant regulated under Subpart LLL, ACUA shall:

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a. Be subject to stipulated penalties under Section VIII (Stipulated Penalties) for failure to meet Subpart LLL emission limits.

b. Propose as part of the submittal required by Paragraph 17 measures for attaining and demonstrating compliance with the applicable emission limit as expeditiously as practicable. These measures will be subject to EPA and DEP review and approval.

c. In the application to modify ACUA's Title V Operating Permit, required by Paragraph 18, ACUA shall, in lieu of following Paragraphs 18.a or b, apply to incorporate operating parameter limits as follows:

i. For any operating parameter limit associated with any pollutant that did not meet Subpart LLL emission limits during the performance test required by Paragraph 16, apply to incorporate the operating parameter limit established during the 2019 Subpart LLL performance tests.

ii. For any operating parameter limits other than those described in Paragraph 20.c.i above, apply to incorporate the operating parameter limits established during the performance test required by Paragraph 16.

21. Compliance with Operating Parameter Limits.

a. From September 1, 2020 until the concurrent submission of the performance test report under Paragraph 17 and application to modify the Facility's Title V Operating Permit under Paragraph 18, ACUA shall comply with the operating parameter

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limits established during the 2019 Subpart LLL performance tests, except that ACUA shall comply with a minimum afterburner temperature of 1530°F.

b. From the Day that ACUA concurrently submits the performance test report under Paragraph 17 and application to modify the Facility's Title V Operating Permit under Paragraph 18, ACUA shall comply with each of the operating parameter limits included in the application to modify ACUA's Title V Operating Permit submitted under Paragraph 18. Those operating parameter limits shall remain in effect until any new operating limits that are re-established during a subsequent performance test conducted pursuant to 40 C.F.R. § 62.16000 and meeting the requirements of 40 C.F.R. § 62.16015 are submitted in a performance test report, as required by Paragraph 17 and concurrent application to modify the Facility's Title V Operating Permit as required by Paragraph 18.

C. Corrective Action Requirement

22. For purposes of the Corrective Action Requirements set forth in Paragraphs 23-26, "Percent Deviations" for the SSI units shall be calculated as follows:

$$OPL_{Total} = \sum_{i=1}^n OPL_i$$

$$\frac{OPL_{Total}}{OT_{Total}} * 100 = P_D$$

where

P_D = Percent Deviations

n = Total number of operating parameter limits ("OPLs") required by Subpart LLL

OPL_i = Number of hours that an SSI unit deviates from an individual OPL during a specified number of Days. If an SSI unit deviates from an OPL for which Table 4

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of Subpart LLL or ACUA's EPA-approved site-specific monitoring plan establishes a data averaging period (or "block") for compliance, then each hour of the applicable data averaging period is counted as an hour of deviation from the OPL.

$OPL_{Total} =$ Sum of hours during a specified number of Days in which either SSI unit deviated from an OPL, while sewage sludge is in the combustion chamber of the SSI unit, except that the hours of an OPL deviation shall only be counted once during time periods of overlapping OPL deviations.

$OT_{Total} =$ Total Operating Time in hours that at least one SSI unit operated during the specified number of Days.

23. No later than 225 Days after the Day that ACUA submits the performance test report required under Paragraph 17 for Furnace B, ACUA shall submit to EPA and DEP for review a report providing the Percent Deviations for the 180 Days after the Day that ACUA submitted the performance test report.

24. If the 180-Day Percent Deviations (which is based on deviations for both Furnace A and Furnace B) is more than 5%:

a. Prior to submission of the Corrective Action Plan required by Paragraph 24.b, ACUA shall as expeditiously as practicable undertake interim and/or long-term corrective measures to minimize the likelihood of recurrence of all contributing causes to the deviations. Following ACUA's submission of the Corrective Action Plan required by Paragraph 24.b., ACUA shall implement the corrective measures selected in the Corrective

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Action Plan in accordance with the Corrective Action Plan's proposed implementation schedule.

b. ACUA shall submit, as part of the report providing the Percent Deviations required by Paragraph 23, a Corrective Action Plan that:

- i. Identifies the causes of the deviations from the operating parameter limits.
- ii. Analyzes the corrective measures to be taken to reduce the rate of deviations from the operating parameter limits; all reasonable alternatives, if any, that are available; and the probable effectiveness and cost of the alternatives. Possible design, operation, new equipment, and maintenance changes shall be evaluated. If a consultant is not retained to assist in the analysis, evaluate whether a consultant should be retained.
- iii. Identifies and describes the corrective measures to be completed, or already completed, to reduce as expeditiously as possible the rate of deviations from the operating parameter limits.
- iv. Identifies a schedule for the implementation of the proposed corrective measures, including proposed commencement and completion dates. The schedule should provide for the implementation of corrective actions as expeditiously as practicable with the goal of completing each measure within 15 Days of submitting the report required under Paragraph 23. If any action is

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not completed or is not expected to be completed within 15 Days after submitting the report, explain the reasons together with the proposed schedule for completion.

- v. Provides the basis for any determination that corrective measures are not required.

25. ACUA shall report the progress on and completion of any corrective measures in the quarterly reports required under Paragraph 39.

26. No later than 225 Days after the completion of the corrective measures identified in the Corrective Action Plan, ACUA shall submit to EPA and DEP for review a report providing the Percent Deviations for the SSI unit for the 180 Days after the completion of the corrective measures identified in the Corrective Action Plan. If the 180-Day Percent Deviations is more than 5%, ACUA shall undertake additional corrective actions and submit a new Corrective Action Plan as required in Paragraph 24, to further reduce deviations from the operating parameter limits.

27. EPA and DEP do not, by their agreement to the entry of this Consent Decree, or by their failure to object to any corrective measures that ACUA may take in the future, warrant or aver in any manner that any of ACUA's corrective measures in the future shall result in compliance with the provisions of the CAA or any other applicable federal, state, or local law or regulation.

28. Notwithstanding EPA's and DEP's review of any plans, reports, corrective measures or other procedures under this Subsection V.C, ACUA shall remain solely responsible for complying with the CAA and its implementing regulations. Nothing in this Subsection V.C. shall be construed as a waiver of EPA's or DEP's rights under the CAA and its regulations for future violations of the Act or its regulations.

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29. After reviewing any report and Corrective Action Plan required by Paragraphs 23, 24, and 26, and after consulting with DEP, EPA will notify ACUA in writing of (i) any deficiencies in the corrective measures identified in the reports, and/or (ii) any objections to the schedules for the corrective measures. EPA will also explain the basis for its objection(s) to the corrective measures and/or schedule(s). ACUA shall implement an alternative or revised corrective measure or implementation schedule based on EPA's comments. If a corrective action that EPA has identified as deficient has already been completed by the time of EPA's notification, ACUA shall not be obligated to implement the corrective action as specified by EPA for that incident. ACUA shall be on notice, however, that EPA has determined that the corrective action is deficient and not acceptable for remedying the same or similar root cause or causes of later incidents. If EPA and ACUA cannot agree on the appropriate corrective measure(s) to be taken, either Party may invoke Dispute Resolution under Section X (Dispute Resolution).

30. Nothing in this Subsection V.C shall be construed to limit the rights of ACUA to take such corrective measures as it deems necessary and appropriate to correct the causes of operating parameter limit deviations immediately following a deviation or in the period during preparation and review of any reports required under Paragraph 23, 24, or 26.

D. Bypass Events

31. From the Date of Lodging, each use of the bypass stack at any time that sewage sludge is in the combustion chamber shall be subject to stipulated penalties as an emission limit violation.

32. No later than 30 Days after the Effective Date, ACUA shall certify that the date, time, and duration of all bypass events are reported by means of an automated system and not by

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manually logging. For purposes of this Paragraph, a “bypass event” occurs when sludge is in the combustion chamber during an operating Day and:

- a. the damper in the bypass stack is in the open position, or
- b. flow is measured through the bypass stack as quantified by a bypass switch, anemometer or equivalent flow monitoring device.

33. The date, time, and duration of a bypass event shall be recorded as required by this Paragraph:

- a. Duration. The bypass event shall be recorded for the entire time that the bypass stack is in the open position and sludge remains in the combustion chamber.
- b. Method. The bypass event shall be recorded with an automated data acquisition system that is powered independently and will not be affected by loss of power from the facility’s electrical service provider.

34. No later than 30 Days after the Effective Date, ACUA shall submit for EPA and DEP approval the standard operating procedures and equipment inspection and maintenance procedures and schedules (collectively, “SOPs”) developed as required under Appendix A.

35. ACUA shall include in the quarterly reports required under Paragraph 39 a report of all times that the bypass stack is in an open position while sewage sludge is in the combustion chamber. The report shall identify the date, time, and duration of all times when the bypass stack is open, the cause of the bypass event, and any action that ACUA took or will take to prevent recurrence of the bypass event.

E. Annual Compliance Report

36. By January 30, 2021, ACUA shall submit the Annual Compliance Report required by 40 C.F.R. § 62.16030(c). The report shall contain the required information for the twelve (12)

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months preceding the submission of the report. The Annual Compliance Report shall include the most current final control plan and site-specific monitoring plan.

F. Additional Compliance Obligations

37. Permits. Where any compliance obligation in this Section V requires ACUA to obtain a federal, state, or local permit or approval, ACUA shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. ACUA may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if ACUA has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

G. State Environmentally Beneficial Project

38. New Jersey and ACUA agree that ACUA will spend \$30,000 to implement a New Jersey Electric Vehicles Charging Project (the “Project”) to install electric vehicle charging (“EV”) stations as specified in Appendix B.

39. If ACUA is unable to find a government entity within Atlantic County that is willing to work with ACUA to purchase and install the EV charging stations as specified in Appendix B within sixty days of the Effective Date of this Consent Decree, ACUA will instead pay \$30,000 to DEP, which payment shall be dedicated to DEP’s It Pay\$ to Plug In program to finance grants that will be used to offset the cost of purchasing and installing EV charging stations, in order to mitigate the alleged environmental harm caused by the alleged violations. This payment will be due within ninety (90) days of the Effective Date and shall be paid by wire transfer in accordance with wire instructions that New Jersey will provide within 75 business days of the Effective Date.

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40. DEP will use its best efforts to utilize the \$30,000 payment by ACUA to fund EV charging infrastructure within Atlantic County. However, if grant applications for suitable EV charging infrastructure projects are not available within 60 days after ACUA makes the payment to the It Pay\$ to Plug In program as provided in paragraph 2 above, then DEP may use the funds to fund grants for EV charging infrastructure projects in areas adjacent to Atlantic County.

VI. REPORTING REQUIREMENTS

41. Beginning with the first complete calendar quarter after the Date of Lodging of this Consent Decree, and then every subsequent calendar quarter until the termination of the Consent Decree, ACUA shall submit to the U.S. Department of Justice, EPA, and DEP a report that includes: all listed compliance measures; completion of milestones; problems encountered or anticipated (together with implemented or proposed solutions); an analysis of the mercury composite sample, and report of any deviations from the mercury composite sample limit, and root cause analyses as required by Paragraph 13; a report of all deviations from the operating parameter limits in effect; a report of all times that the bypass stack is open as required by Paragraph 35; status of any permit applications; and the results of any inspections or tests, and any repairs made. ACUA shall submit each report within 30 Days of the last Day of each calendar quarter. ACUA's first quarterly report shall include the required information from the Date of Lodging of the Consent Decree through the end of the first complete calendar quarter after that date.

42. If ACUA violates, or has reason to believe that it may violate, any requirement of this Consent Decree, ACUA shall notify EPA and DEP of such violation and its likely duration, in writing, within 72 hours of when ACUA first becomes aware of the actual or potential violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken,

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to prevent, correct, or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, ACUA shall so state in the report. ACUA shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day ACUA becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph 41 relieves ACUA of its obligation to provide the notice required by Section IX (Force Majeure).

43. Whenever any violation of this Consent Decree, or of the statutes, regulations and permits referenced herein, or any other event affecting ACUA's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, ACUA shall notify EPA and DEP orally or by electronic transmission as soon as possible, but no later than 24 hours after ACUA first knew of the violation or event. This notification requirement is in addition to any other notifications requirement(s) under federal or New Jersey law, including but not limited to N.J.S.A. 26:2C-19(e) and N.J.A.C. 7:1E-5.3, and in addition to the requirements set forth in the preceding Paragraph.

44. All reports and notifications made under to this Section shall be submitted to the persons designated in Section XIV (Notices).

45. Any report submitted by ACUA under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for

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submitting false information, including the possibility of fines and imprisonment for knowing violations.

46. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

47. The reporting requirements of this Consent Decree do not relieve ACUA of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. Notwithstanding the United States' and DEP's review and approval of any documents submitted to them by ACUA under this Decree, ACUA shall remain solely responsible for compliance with the terms of the CAA and its implementing regulations, and this Decree.

48. Any information as required by this Consent Decree may be used by the United States or New Jersey in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

49. Report to the Court. No later than 24 months after the Date of Entry, and every two years thereafter until termination of this Consent Decree pursuant to Section XVIII, the United States, in consultation with New Jersey and ACUA, shall submit to the Court a report on compliance and/or noncompliance with the requirements of this Consent Decree. The report shall include a recommendation regarding the need for a status conference with the Court. ACUA may submit to the Court a response or supplement to the United States' report to the Court within 60 Days after the United States submits its report.

VII. REVIEW AND APPROVAL PROCEDURES

50. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted to EPA and/or DEP for approval under this Consent Decree, EPA and

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DEP shall consult with each other, and a single approving agency (either EPA or DEP) shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

51. If the submission is approved under Paragraph 50.a, ACUA shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part under Paragraph 50.b or 50.c, ACUA shall, upon written direction from EPA or DEP (after consultation), take all actions required by the approved plan, report, or other item that EPA or DEP determines are technically severable from any disapproved portions, subject to ACUA's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

52. If the submission is disapproved in whole or in part under Paragraph 50.c or 50.d, ACUA shall, within 45 days or such other time as EPA or DEP (after consultation), may allow if provided in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, ACUA shall proceed in accordance with the preceding Paragraph.

53. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA or DEP may again require ACUA to correct any deficiencies in accordance

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with the preceding Paragraphs, subject to ACUA's right to invoke Dispute Resolution and the right of EPA or DEP to seek stipulated penalties as provided in the preceding Paragraphs.

54. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 45-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the ACUA's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VIII. STIPULATED PENALTIES

55. ACUA shall be liable for stipulated penalties to the United States and/or New Jersey, as specified below, for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any payment of civil penalties, compliance requirements of this Decree and any work plan or schedule approved under this Decree, and submission of any required reports or notifications, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

56. Late Payment of Civil Penalty. If ACUA fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, ACUA shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is not paid after the due date, plus interest accruing from the due date at the rate specified in 28 U.S.C. § 1961 as of the due date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

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57. Compliance Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of any of the requirements specified in Section V (Compliance Requirements), except as provided in Paragraphs 58 through 64:

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 14th Day	\$250.00
15th through 30th Day	\$500.00
31st Day and beyond	\$1000.00

58. Mercury Monthly Composite Sample Limit. The following stipulated penalty shall accrue per exceedance of the proposed or approved mercury limit for the monthly sewage sludge composite sample in violation of Paragraph 13.d.

<u>Per composite sample in exceedance of the limit</u>	\$3,000
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59. Performance Test. The following stipulated penalties shall accrue per performance test that fails to meet the requirements for 40 C.F.R. §§ 60.8 and 62.16015 in violation of Paragraph 16:

<u>Per performance test</u>	\$5,000
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60. Emission Limits. The following stipulated penalties shall accrue per pollutant for which ACUA fails to demonstrate compliance with the applicable emission limit during a performance test required by Paragraph 16 or 19.b:

<u>Per pollutant per performance test</u>	\$5,000
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61. Operating Parameter Limits. The following stipulated penalties shall accrue per violation per Day for each violation of the Paragraph 21 requirement to comply with each operating parameter limit established during the performance test:

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<u>Period of Continuous Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 5 th Day	\$250.00
6 th through 10 th Day	\$500.00
11 th Day and beyond	\$1000.00

62. Bypass Events. The following stipulated penalties shall accrue per incident in which ACUA violates emission limits by use of the bypass stack in violation of Paragraph 31.

<u>Per bypass incident</u>	\$3,000
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63. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI (Reporting Requirements):

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 14th Day	\$250.00
15th through 30th Day	\$500.00
31st Day and beyond	\$1000.00

64. State Environmentally Beneficial Project. The following stipulated penalties, payable only to New Jersey, shall accrue for each Day that ACUA fails to carry out the Environmentally Beneficial Project set forth in subsection G of Section V and Appendix B hereto, or alternatively, for each Day that ACUA fails to make the payment due to DEP's It Pay\$ to Plug In program.

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1st through 14th Day	\$500.00
15th through 30th Day	\$1,000.00
31st Day and beyond	\$2,500.00

65. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated

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penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States or New Jersey has notified Defendant that a violation of this Consent Decree has occurred.

66. ACUA shall pay any stipulated penalty to the United States and New Jersey within thirty (30) Days of receiving a written demand by either Plaintiff. Except as otherwise provided in this Paragraph, stipulated penalties shall be payable as follows: fifty (50) percent, plus any applicable interest, to the United States and fifty (50) percent, plus any applicable interest, to New Jersey. Any stipulated penalties for failure to make the payment due for Environmentally Beneficial Project set forth in Section V.G. shall be payable to New Jersey only. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

67. Stipulated penalties shall continue to accrue as provided in Paragraph 65 during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Plaintiff(s) that is not appealed to the District Court, ACUA shall pay accrued penalties determined to be owing, together with interest accruing from the date Defendant received the written demand under Paragraph 66 at the rate specified in 28 U.S.C. § 1961 as of that date, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the District Court and the Plaintiff(s) prevail in whole or in part, ACUA shall pay all accrued penalties determined by the Court to be owing, together with interest accruing from the date Defendant received the written

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demand under Paragraph 66 at the rate specified in 28 U.S.C. § 1961 as of that date, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, ACUA shall pay all accrued penalties determined to be owing, together with interest accruing from the date Defendant received the written demand under Paragraph 66 at the rate specified in 28 U.S.C. § 1961 as of that date, within 15 Days of receiving the final appellate court decision.

68. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalties provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Sections V and VI that have occurred between the Date of Lodging and the Effective Date of this Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

69. ACUA shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10.a, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. ACUA shall pay stipulated penalties to New Jersey in the manner set forth in Paragraph 10.b.

70. Notwithstanding any other provision of this Section, the United States or New Jersey may, in its unreviewable discretion, waive any portion of stipulated penalties owed to it that have accrued under this Consent Decree.

71. If ACUA fails to pay stipulated penalties according to the terms of this Consent Decree, ACUA shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,

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accruing as of the date payment became due, together with additional penalties and administrative costs to the extent allowed by applicable law. Nothing in this Paragraph shall be construed to limit the United States or New Jersey from seeking any remedy otherwise provided by law for ACUA's failure to pay any stipulated penalties.

72. The payment of penalties and interest, if any, shall not alter in any way ACUA's obligations to complete the performance of the requirements of this Consent Decree.

73. Non-Exclusivity of Remedy. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States and New Jersey under Section XII (Effect of Settlement/Reservation of Rights) below. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or New Jersey to seek any other relief they deem appropriate for Defendant's violations of this Decree or statutes, regulations, or permits referenced within it, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid under this Consent Decree. Nothing in this Paragraph shall be construed as prohibiting, altering or in any way limiting any defenses available to ACUA with respect to any such violations, except as limited by Section X (Dispute Resolution).

IX. FORCE MAJEURE

74. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of ACUA, of any entity controlled by ACUA, or of ACUA's contractors, which delays or prevents the performance of any obligation under this

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Consent Decree despite ACUA's best efforts to fulfill the obligation. The requirement that ACUA exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include ACUA's financial inability to perform any obligation under this Consent Decree.

75. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, ACUA shall provide notice orally or by electronic mail to Robert Buettner, EPA Region 2's Chief of the Air Compliance Branch, Enforcement and Compliance Assurance Division, and to Richelle Wormley, Director, Division of Air Enforcement, DEP within 72 hours of when ACUA first knows that the event might cause a delay. Within seven Days thereafter, ACUA shall provide in writing to EPA and DEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; ACUA's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of ACUA, such event may cause or contribute to an endangerment to public health, welfare, or the environment. ACUA shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude ACUA from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. ACUA shall be deemed to know of any

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circumstance of which ACUA, any entity controlled by ACUA, or ACUA's contractors knew or should have known.

76. If the Plaintiffs agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of obligations under this Decree that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The Plaintiffs will notify ACUA in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

77. If either or both Plaintiffs disagree that the delay or anticipated delay has been or will be caused by a force majeure event, the Plaintiffs will notify ACUA in writing of its decision.

78. If ACUA elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of Plaintiffs' notice. In any such proceeding, ACUA shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that ACUA complied with the requirements of Paragraphs 74 and 75. If ACUA carries this burden, the delay at issue shall be deemed not to be a violation by ACUA of the affected obligation of this Consent Decree identified to the Plaintiffs and the Court.

X. DISPUTE RESOLUTION

79. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. ACUA's failure to seek resolution of a dispute under this Section shall preclude ACUA from raising any such issue as a defense to an action by the United States to enforce any obligation of ACUA arising under this Decree.

80. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when ACUA sends the United States and New Jersey a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with New Jersey, shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, ACUA invokes formal dispute resolution procedures as set forth below.

81. Formal Dispute Resolution. ACUA shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and New Jersey a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting ACUA's position and any supporting documentation relied upon by ACUA.

82. The United States, after consultation with New Jersey, shall serve its Statement of Position within 45 Days of receipt of ACUA's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion

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supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on ACUA, unless ACUA files a motion for judicial review of the dispute in accordance with the following Paragraph.

83. ACUA may seek judicial review of the dispute by filing with the Court and serving on the United States and New Jersey, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' Statement of Position under the preceding Paragraph. The motion shall contain a written statement of ACUA's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. ACUA's motion shall not raise new issues or submit new facts that were not previously presented to the United States during formal dispute resolution.

84. The United States, after consultation with New Jersey, shall respond to ACUA's motion within the time period allowed by the Local Rules of the Court. ACUA may file a reply memorandum, to the extent permitted by the Local Rules.

85. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 83 of this Section pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval under this Consent Decree; the adequacy of the performance of work undertaken under this Consent Decree; and all other disputes that are accorded review on the administrative record under

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applicable principles of administrative law, ACUA shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, ACUA shall bear the burden of demonstrating that its position complies with this Consent Decree and its position will achieve compliance with the terms and conditions of this Consent Decree, its permits, and the Act in an expeditious manner.

86. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of ACUA under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in this Section. If ACUA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

87. The Plaintiffs and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States and/or New Jersey in accordance with the terms of this Consent Decree;

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- c. obtain documentary evidence, including photographs and similar data; and
- d. assess ACUA's compliance with this Consent Decree.

88. Until five years after the termination of this Consent Decree, ACUA shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to ACUA's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States and/or New Jersey, ACUA shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

89. At the conclusion of the information-retention period provided in the preceding Paragraph, ACUA shall notify the Plaintiffs at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, ACUA shall deliver any such documents, records, or other information to EPA.

90. ACUA may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If ACUA asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and

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recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by ACUA. However, no documents, records, or other information created or generated as required by this Consent Decree shall be withheld on grounds of privilege.

91. ACUA may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that ACUA seeks to protect as CBI, ACUA shall follow the procedures set forth in 40 C.F.R. Part 2. ACUA may make no claim of business confidentiality, privilege, or protection regarding any records that ACUA is required to create or generate under this Consent Decree. Under no circumstances shall emissions or effluent data be identified or considered CBI.

92. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the Plaintiffs under applicable federal and state laws, regulations or permits, nor does it limit or affect any duty or obligation of ACUA to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

93. This Consent Decree resolves the civil claims of the United States and New Jersey alleged in the Complaint filed in this action through August 31, 2020. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations, nor does it limit any defenses available to Defendant thereon.

94. Except as expressly provided in this Consent Decree, the United States and New Jersey reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or New

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Jersey to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal laws, State laws, regulations, or permit conditions. The United States and New Jersey further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

95. In any subsequent administrative or judicial proceeding initiated by the United States or New Jersey for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, ACUA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States or New Jersey in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved under Paragraph 93.

96. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. ACUA is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. ACUA's compliance with this Consent Decree shall be no defense to any action commenced under any such laws, regulations, or permits, except as set forth herein. The United States and New Jersey do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that ACUA's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, or with any other provisions of federal, State, or local laws, regulations, or permits.

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97. This Consent Decree does not limit or affect the rights of ACUA or of the United States or New Jersey against any third parties not a party to this Consent Decree, nor does it limit the rights of third parties not a party to this Consent Decree against ACUA, except as otherwise provided by law. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

XIII. COSTS

98. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and New Jersey shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by ACUA.

XIV. NOTICES

99. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by e-mail: eescdcopy.enrd@usdoj.gov
RE: DJ # 90-5-2-1-11392/1

As to the United States by mail: Chief
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
RE: DJ # 90-5-2-1-11392/1

As to EPA by phone or e-mail: 212-637-5031
Robert Buettner, Chief
Air Compliance Branch
buettner.robert@epa.gov

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As to EPA by mail: Robert Buettner, Chief
Air Compliance Branch
Enforcement and Compliance Assurance
Division
EPA Region 2
290 Broadway
New York, NY 10007

As to the State of New Jersey by e-mail: Gary Wolf, II
Section Chief
Environmental Enforcement and
Environmental Justice Section
Gary.Wolf@law.njoag.gov

As to the State of New Jersey by mail: Section Chief
Environmental Enforcement and
Environmental Justice Section
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-093

As to DEP by e-mail: Richelle Wormley, Director
Division of Air Enforcement
Compliance & Enforcement
Richelle.Wormley@dep.nj.gov

Mary Toogood, Manager
Bureau of Air Compliance & Enforcement
Southern Region
Mary.Toogood@dep.nj.gov

As to DEP by mail: Richelle Wormley, Director,
Division of Air Enforcement
NJDEP
401 East State Street
Mail Code 401-04B
PO Box 420
Trenton, NJ 08625-042

Mary Toogood, Manager

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Bureau of Air Compliance & Enforcement
Southern Region
2 Riverside Dr, Suite 201
Camden, NJ 08103

As to Defendant by mail or e-mail:

Richard Dovey, President
Atlantic County Utilities Authority
P.O. Box 996
Pleasantville, NJ 08232
rdovey@ACUA.com

Brian Lefke, Board Secretary
Atlantic County Utilities Authority
P.O. Box 996
blefke@acua.com

Salvatore Perillo, Esq.
4030 Ocean Heights Ave.
Egg Harbor Township, NJ 08234
sperillo@npdlaw.com

100. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

101. Notices submitted under this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

102. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket. ACUA hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines

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to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

103. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, under Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

104. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

105. Any disputes concerning modification of this Decree shall be resolved under Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 85, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

106. After ACUA has completed the requirements of Section V (Compliance Requirements) of this Decree, has maintained satisfactory compliance with its Subpart LLL operating parameter limits and this Consent Decree for two (2) years, has paid the civil penalty and any accrued stipulated penalties and interest as required by this Consent Decree, and has obtained a permit modification incorporating site-specific operating parameter limits, ACUA may

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serve upon the Plaintiffs a “Request for Termination,” stating that ACUA has satisfied those requirements, together with all necessary supporting documentation.

107. Following receipt by the Plaintiffs of ACUA’s Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether ACUA has complied satisfactorily with the requirements for termination of this Consent Decree. If the United States, after consultation with New Jersey, agrees that the Decree may be terminated, the Parties shall submit, for the Court’s approval, a joint stipulation terminating the Decree.

108. If the United States, after consultation with New Jersey, does not agree that the Decree may be terminated, ACUA may invoke dispute resolution under Section X (Dispute Resolution). However, ACUA shall not seek dispute resolution of any dispute regarding termination until 30 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

109. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. ACUA consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified ACUA in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

110. Each Party certifies that at least one of its undersigned representatives is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

111. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. ACUA agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

112. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXII. FINAL JUDGMENT

113. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

114. The following Appendix is attached to and part of this Consent Decree:

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“Appendix A” is the description of the “Standard Operating Procedures for Bypass Events.”

“Appendix B” is the description of the “New Jersey Electric Vehicles Charging Project.”

Dated and entered this ___ day of _____, 2020.

UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA:

JONATHAN D. BRIGHTBILL
Principal Deputy Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

s/ Brian G. Donohue

1/15/2021

BRIAN DONOHUE
Senior Attorney
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division

Date


PROVIDENCE SPINA
Special Department of Justice Counsel

12/10/2020
Date

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FOR PLAINTIFF UNITED STATES OF AMERICA:

CRAIG CARPENITO
United States Attorney
District of New Jersey

ALLAN B.K. URGENT
Assistant United States Attorney

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Schaaf, Eric

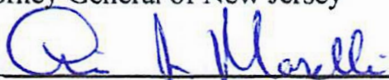
Digitally signed by Schaaf, Eric
Date: 2021.01.14 17:52:59 -05'00'

ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency, Region 2

Date

FOR PLAINTIFF STATE OF NEW JERSEY:

GURBIR S. GREWAL
Attorney General of New Jersey

By:  _____

LISA J. MORELLI
Deputy Attorney General
New Jersey Department of Law &
Public Safety, Division of Law

12/3/2020

Date

CATHERINE MCCABE
Commissioner
New Jersey Department of
Environmental Protection

By:  _____

RICHELLE WORMLEY
Director
Division of Air Enforcement
Deputy Attorney General
New Jersey Department of
Environmental Protection

12/3/2020

Date

FOR DEFENDANT ATLANTIC COUNTY UTILITIES AUTHORITY:

A handwritten signature in blue ink, appearing to read "Richard S. Dovey", written over a horizontal line.

RICHARD DOVEY
President
Atlantic County Utilities Authority

11/25/2020

Date

APPENDIX A

STANDARD OPERATING PROCEDURES FOR BYPASS EVENTS

1. Minimize bypass stack emissions due to inclement weather or a reduction in or restriction on the availability of electrical power in ACUA electrical service area.

ACUA shall develop standard operating procedures to shut down the SSI units during periods of anticipated inclement weather events (including, but not limited to, heavy flooding due to storm surges), or reductions or restrictions in the availability of electrical power, that may cause a bypass event to occur (“Inclement Weather Incinerator Operations Standard Operating Procedure” or “SOP”). Anticipated inclement weather events include any weather event that may cause bypass events, such as extreme heat conditions that may produce electrical brownouts or blackouts. The SOP must provide that if ACUA receives warnings of impending brownouts or blackouts from its electrical service provider, ACUA shall take all necessary measures to modify its operations to minimize the possibility of bypass events.

2. Minimize bypass stack emissions caused by equipment malfunction.

ACUA shall develop equipment inspection and maintenance procedures and schedules to minimize the occurrence of bypass events associated with critical equipment components. Critical equipment components include, but are not limited to, equipment components that were responsible for past bypass events and any other equipment at the facility whose failure would be capable of creating a bypass event.

APPENDIX B

NEW JERSEY ELECTRIC VEHICLES CHARGING PROJECT

Except as otherwise provided in Section V.G of the Consent Decree, ACUA shall perform the New Jersey Electric Vehicles Charging Project (“Project”) identified below in the manner specified below:

1. ACUA shall purchase and install two level 2 dual port 240V electric vehicle (EV) charging stations. The stations shall be installed at government entity locations within Atlantic County and will be available for public use. ACUA shall request that the government entities at which the EV charging stations are installed include and provide details of the EV charging stations on their website. If requested by ACUA, the final locations of the charging stations may be relocated subject to approval of the New Jersey Department of Environmental Protection, Division of Air Enforcement (DEP), which approval shall not be unreasonably withheld. In addition, ACUA shall ensure that conspicuous signage for the EV charging stations is installed. The EV charging stations shall be networked, and ACUA shall ensure the stations are added to the Alternative Fuels Data Center database at <https://afdc.energy.gov/stations/#/find/nearest>.
2. Funds dedicated for this Project shall not be used to pay for consultant oversight costs. If ACUA requires the assistance of a consultant, it shall provide funds directly to the consultant in addition to the funds dedicated to the Project.
3. ACUA shall complete the purchase and installation of the EV charging stations described in Paragraph 1 of this Appendix by April 1, 2022
4. ACUA shall submit quarterly progress reports on the Project, due within 15 Days of the close of each calendar quarter. The progress reports shall include the progress made on purchasing and installing the EV charging stations and a description of any installation, operating, or other problems encountered and the solution/response thereto.
5. ACUA shall submit a written final report on the Project to DEP verifying that it has completed the Project in accordance with the terms of this Appendix, which report shall be certified by a responsible officer or director of ACUA. ACUA shall submit the final report and certification to DEP within 30 Days of completion of the Project.
6. The Project completion report shall contain the following information:
 - a. A detailed description of the Project as implemented;
 - b. A description of any operating problems encountered and the solution/response thereto;
 - c. Itemized costs;
 - d. Certification that the Project has been fully implemented pursuant to the provisions of this Appendix; and

- e. A description of the environmental and public health benefits resulting from implementation of the Project, with a quantification of the benefits and pollutant reductions, if feasible.
7. ACUA shall bring any unexpected issues related to the completion of the Project to DEP's attention. If the Project has not or cannot be completed as described herein, ACUA shall notify DEP in writing no later than February 1, 2022 and shall submit to DEP an alternative project proposal.

It is DEP's sole discretion to approve an alternate project proposal.

8. Project documents submitted to DEP shall be sent to:

Mary Toogood, Manager
Division of Air Enforcement
Bureau of Air Compliance & Enforcement-Southern
2 Riverside Drive, Suite 201
Camden, New Jersey 08103

9. ACUA hereby consents to reasonable access by DEP to property or documents under ACUA's control for verifying progress or completion of the Project. The Department may demand at any time, and ACUA shall forthwith provide, any documents relating in any way to the Project, including but not limited to its implementation, progress and completion.